

CITY OF MUSKEGON

CITY COMMISSION MEETING

JULY 26, 2011

CITY COMMISSION CHAMBERS @ 5:30 P.M.

AGENDA

- ❑ CALL TO ORDER:
- ❑ PRAYER:
- ❑ PLEDGE OF ALLEGIANCE:
- ❑ ROLL CALL:
- ❑ HONORS AND AWARDS:
- ❑ INTRODUCTIONS/PRESENTATION:
- ❑ CONSENT AGENDA:
 - A. Approval of Minutes. CITY CLERK
 - B. Switchgear Upgrade Engineering Proposal. WATER FILTRATION
 - C. Muskegon County Mutual Police Assistance Agreement. PUBLIC SAFETY
 - D. Encroachment Ordinance Amendment. CITY CLERK
 - E. Resolution Authorizing Issuance of Municipal Security with a Grant with Fifth Third Bank. FINANCE
- ❑ PUBLIC HEARINGS:
- ❑ COMMUNICATIONS:
- ❑ CITY MANAGER'S REPORT:
- ❑ UNFINISHED BUSINESS:
- ❑ NEW BUSINESS:
 - A. Approval of Sale of City-Owned Home at 468 W. Forest. COMMUNITY & NEIGHBORHOOD SERVICES
 - B. Approval of Sale of City-Owned Home at 1080 E. Laketon. COMMUNITY & NEIGHBORHOOD SERVICES
 - C. Approval of Sale of City-Owned Home at 1644 Division. COMMUNITY & NEIGHBORHOOD SERVICES

D. Concurrence with the Housing Board of Appeals Notice and Order to Demolish 407 Marquette. PUBLIC SAFETY

❑ ANY OTHER BUSINESS:

❑ PUBLIC PARTICIPATION:

- ***Reminder: Individuals who would like to address the City Commission shall do the following:***
- Fill out a request to speak form attached to the agenda or located in the back of the room.
- Submit the form to the City Clerk.
- Be recognized by the Chair.
- Step forward to the microphone.
- State name and address.
- Limit of 3 minutes to address the Commission.
- (Speaker representing a group may be allowed 10 minutes if previously registered with City Clerk.)

❑ CLOSED SESSION:

❑ ADJOURNMENT:

ADA POLICY: THE CITY OF MUSKEGON WILL PROVIDE NECESSARY AUXILIARY AIDS AND SERVICES TO INDIVIDUALS WHO WANT TO ATTEND THE MEETING UPON TWENTY FOUR HOUR NOTICE TO THE CITY OF MUSKEGON. PLEASE CONTACT ANN MARIE BECKER, CITY CLERK, 933 TERRACE STREET, MUSKEGON, MI 49440 OR BY CALLING (231) 724-6705 OR TDD: (231) 724-4172.

Date: July 26, 2011
To: Honorable Mayor and City Commissioners
From: Ann Marie Becker, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve minutes of the July 11th Commission Worksession Meeting and the July 12th City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

City of Muskegon
City Commission Worksession
July 11, 2011
City Commission Chambers
5:30 PM

MINUTES

2011-48

Present: Commissioners Warmington, Gawron, Carter, Spataro, Shepherd, and Wisneski.

Absent: Commissioner Wierengo.

Civil Infraction Fees.

Many zoning ordinance violations have occurred. Commissioner Spataro asked what avenues can be taken to enforce the ordinance?

Currently the City issues civil infractions. The City Attorney will review the law to see if the fees for civil infractions can be raised.

Public Safety Direction Discussion.

The City Commission discussed the position of the Public Safety Director with the resignation of the current Public Safety Director, Tony Kleibecker.

It was decided that the City Manager should try to recruit candidates with experience in Policing, Fire, and Inspections. It is understood these qualifications will limit the pool of candidates and may take several months to hire a new director. In the meantime, interim candidates from within the department(s) will be chosen to cover the position.

Proposed Encroachment Ordinance.

A proposed Encroachment Ordinance was presented to the City Commission for their consideration. The proposed ordinance would allow staff to approve encroachments. Currently the City Commission approves all encroachments. Any encroachments that may be denied by staff can be appealed to the City Commission.

Under the proposed ordinance, all current encroachments will expire on August 31, 2011 and will need to be renewed on an annual basis. This will ensure that all information is kept current and a current certificate of insurance is on file. New proposed fees are \$25 if an annual inspection is not required and a \$50 fee if an annual inspection is required.

Adjournment.

Motion by Commissioner Carter, seconded by Commissioner Shepherd to adjourn at 6:35 p.m.

MOTION PASSES

**Ann Marie Becker, MMC
City Clerk**

CITY OF MUSKEGON

CITY COMMISSION MEETING

JULY 12, 2011

CITY COMMISSION CHAMBERS @ 5:30 P.M.

MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, MI at 5:30 p.m., Tuesday, July 12, 2011.

Mayor Warmington opened the meeting with a prayer from Pastor Josh Dear from the Lakeside Baptist Church after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen Warmington, Vice Mayor Stephen Gawron, Commissioners Clara Shepherd, Lawrence Spataro, Steve Wisneski, and Chris Carter, Acting City Manager-Public Safety Director Tony Kleibecker, City Attorney John Schrier, and City Clerk Ann Marie Becker.

Absent: Commissioner Sue Wierengo (excused).

2011-49 HONORS AND AWARDS:

A. Recognition of Neighborhood Associations for Bicycle Equipment Donation.

Public Safety Director Tony Kleibecker, introduced representatives from the Nelson Neighborhood Improvement Association and the Marquette Neighborhood Association who donated money to the Police Department allowing them to purchase bicycle trunks.

B. Social Justice Commission of Muskegon County.

Public Safety Director Tony Kleibecker introduced Reverend Samuel Greer who explained what the Social Justice Commissions goals are. Reverend Greer asked for a resolution of support.

Motion by Commissioner Spataro, second by Commissioner Shepherd to adopt a resolution of support for the Social Justice Commission.

ROLL VOTE: Ayes: Shepherd, Spataro, Warmington, Wisneski, Carter, and Gawron

Nays: None

MOTION PASSES

C. Honorary Ambassador Award.

Mayor Warmington presented Bobby Serio with an Honorary Ambassador Award thanking him for volunteering his time by cutting the lawn and watching over the Community & Neighborhood Services home that is for sale next door to him.

2011-50 CONSENT AGENDA:

A. Approval of Minutes. CITY CLERK

SUMMARY OF REQUEST: To approve minutes of the City Commission Meeting that was held on Tuesday, June 28, 2011.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

B. SECOND READING: Rezoning Request for the Property Located at 1753 Madison Street. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to rezone the property at 1753 Madison Street from I-2, General Industrial to B-4, General Business District, by Kurt Dykman, JNJ Discounts. The applicant would like to move his growing retail business to this location.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends approval of the rezoning.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their June 16th meeting.

C. SECOND READING: Rezoning Request for the Property Located at 2010 S. Getty Street. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to rezone the property at 2010 S. Getty Street from I-1, Light Industrial to B-4, General Business District, by Michael Vasquez. The applicant would like to open an auto dealership at this location.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends approval of the rezoning.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their June 16th meeting.

D. Consideration of Bids: Interior Painting of the Roberts and Marshall

Elevated Tanks (W-730). ENGINEERING

SUMMARY OF REQUEST: Award the project to M.K. Painting, Inc. out of Wyandotte, MI. M.K. Painting, Inc. submitted the lowest responsible bid of \$167,000.

FINANCIAL IMPACT: The contract cost of \$167,000.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Award the contract to M.K. Painting, Inc.

Motion by Vice Mayor Gawron, second by Commissioner Carter to approve the Consent Agenda as presented.

ROLL VOTE: Ayes: Spataro, Warmington, Wisneski, Carter, Gawron, and Shepherd

Nays: None

MOTION PASSES

PUBLIC PARTICIPATION: Public comments were received.

ADJOURNMENT: The City Commission Meeting adjourned at 6:00 p.m.

Respectfully submitted,

Ann Marie Becker, MMC
City Clerk

Date: July 24, 2011
To: Honorable Mayor and City Commission
From: Water Filtration Plant
RE: Switchgear Upgrade Engineering Proposal

SUMMARY OF REQUEST:

Authorize staff to enter into agreement with Tetra-Tech to provide the necessary engineering design, bidding assistance and start-up construction assistance to replace the existing 1972 pump station switchgear for \$24,950 since they were the design engineer for the entire facility back in 2004.

FINANCIAL IMPACT:

This upgrade was budgeted at \$175,000 which includes engineering services.

BUDGET ACTION REQUIRED:

None at this time.

STAFF RECOMMENDATION:

Authorize staff to enter into an engineering service agreement with Tetra-Tech for \$24,950 as per the attached proposal.

Date: July 11, 2011
To: DPW Director – Mohammed Al-Shatel
From: Water Filtration – Kevin Herbert
RE: 1972 Pump Station Switchgear Engineering Services

The switchgear breakers outside the 1972 built high service pump station switches 2400 volt power between the 6 high service pumps is in need of an upgrade.

These breakers have been problematic and are unreliable due to their current age. As part of the last major plant expansion, this switchgear was expanded to include a new main secondary breaker, tie breaker, and generator main breaker as well as new motor starters for high service pumps 1-6. The new starters were supplied with solid state protective relaying. Due to cost constraints at that time, these breakers remained with the intent that upgrades to these would be done at a later date. These breakers are approaching 40 years of service.

Tetra-Tech was the engineering company that was involved in the plant upgrade project in 2004 and was responsible for the design of the plants electrical distribution system as well as the plant supervisory control and data acquisition systems. Gene Jones from Tetra-Tech is intimately familiar with these systems and as the electrical engineer has provided support and troubleshooting assistance to us at no cost for the last 7 years. Gene has been an invaluable resource.

I recommend approval of the proposal from Tetra-Tech to provide engineering services for the switchgear upgrade at a cost of \$24,950.00.



June 30, 2011

Mr. Kevin M. Herbert
Muskegon Water Filtration Plant
1900 Beach Street
Muskegon, MI 49441

**Re: Muskegon Water Filtration Plant
Proposal for Professional Services
1972 Medium Voltage Switchgear Upgrade**

Dear Mr. Herbert:

Pursuant to your request, we are pleased to provide the City of Muskegon a proposal for engineering design, bidding assistance, and startup construction assistance services for upgrades to the 1972 Switchgear, two high service pump feeder breakers, and associated protective relays, as well as replacement of existing surge suppression units that have reached the end of their useful life.

This proposal contains our understanding of the project requirements, proposed scope of engineering services, and fee estimate.

STATEMENT OF UNDERSTANDING

It is our understanding that the City would like replace the existing 4160-volt feeder breakers that distribute power to high service pumps 1-3-5, and 2-4-6. These breakers have been problematic and are unreliable due to their current age. As part of the last major plant expansion, this switchgear was expanded to include a new main secondary breaker, tie breaker, and generator main breaker as well as new motor starters for high service pumps 1-6. The new starters were supplied with solid state protective relaying. Due to cost constraints at that time, these breakers remained with the intent that upgrades to these would be done at a later date. These breakers are approaching 40 years of service.

The design will include a discussion with plant staff on which of three alternatives to choose from with respect to these two breakers. The three alternatives to review include:

1. Install new breakers in place of the existing breakers.
2. Install new breakers and associated enclosures at the end of the existing switchgear and connect to the bus as required.
3. Install new fused feeder switches versus breakers at the end of the pad and connect to the bus as required.

SCOPE OF SERVICES

The detailed scope of engineering services is as follows:

Design

- Tetra Tech will make one (1) site visit during the design phase to discuss project objectives, collect important onsite and remote site design information.
- Tetra Tech will develop the following design drawings:
 - Site Plan
 - Power Distribution Drawing
 - Wiring diagram for proposed revisions
 - Background plans
- Tetra Tech will prepare project specifications.

Bidding

- Tetra Tech will assist the City of Muskegon in preparing front-end contract documents. We have budgeted a total of 8-hours for this task.
- Provide one (1) copy of the Contract Documents (engineering drawings and specifications) and any addenda, which may be issued to bidding service agencies, such as Dodge Reports. Additional sets required for bidding will be sold to bidders or others for a nominal fee approximately equal to the cost of printing and handling.
- Conduct one (1) pre-bid meeting, maximum of one (1) days at OWNERS office.
- Respond to questions and prepare and issue addenda as required to interpret, clarify or expand the bidding documents.
- Review and evaluate the apparent low bidder's qualifications for undertaking the work.
- Consult with and advise the City as to the acceptability of subcontractors and other persons and organization proposed by the prime contractor (hereinafter called "Contractor") of those portions of the work as such acceptability is required by the bidding documents.
- Assist the City in evaluating bids and make recommendation of the award of the contract; and assist the City in obtaining the insurance, performance bond and payment bond certificates and other such submittal items required from the Contractor by the contract documents so that construction of the project can commence.

Construction Assistance

- Tetra Tech will provide 1-day of on-site construction verification to verify the contractor has installed and configured the components correctly.



- Tetra Tech will provide 1-day of onsite start-up services to assist the City during installation and startup of the system.
- Tetra Tech has budgeted one (1) follow-up visit after the system has been in service for at least 30-days to verify operation of the switchgear.

SCHEDULE

We are available to start work within 14 days of the award of the contract.

COMPENSATION

Compensation for our personnel directly engaged in the work of this proposal will be based on a lump sum of:

Design	-	\$11,500
Bidding Assistance	-	\$7,100
<u>Construction</u>	-	<u>\$6,350</u>
Total	-	\$24,950

If you concur with our proposal, please sign in the space provided below and return one original signed copy of this proposal to indicate your authorization to proceed. The agreement for this project is comprised of this proposal and the attached Standard Terms and Conditions.

We look forward to working with you on this important project. If you need additional information, please call me at (734) 213-5075.

Sincerely,

A handwritten signature in black ink that reads 'Mick S. Jones'.

Mick S. Jones, P.E.
Senior Project Manager

Encl.: Standard Terms and Conditions

Copy: Accounting (w/encl.)

PROPOSAL ACCEPTED BY _____

TITLE _____ **DATE** _____



Tetra Tech of Michigan, PC

Engineering Services Standard Terms & Conditions

Services Consultant will perform services for the Project as set forth in the provisions for Scope of Work/Fee/Schedule in the proposal and in accordance with these Terms & Conditions. Consultant has developed the Project scope of service, schedule, and compensation based on available information and various assumptions. The Client acknowledges that adjustments to the schedule and compensation may be necessary based on the actual circumstances encountered by Consultant in performing their services. Consultant is authorized to proceed with services upon receipt of an executed Agreement.

Compensation In consideration of the services performed by Consultant, the Client shall pay Consultant in the manner set forth above. The parties acknowledge that terms of compensation are based on an orderly and continuous progress of the Project. Compensation shall be equitably adjusted for delays or extensions of time beyond the control of Consultant. Where total project compensation has been separately identified for various tasks, Consultant may adjust the amounts allocated between tasks as the work progresses so long as the total compensation amount for the project is not exceeded.

Fee Definitions The following fee types shall apply to methods of payment:

- **Salary Cost** is defined as the individual's base salary plus customary and statutory benefits. Statutory benefits shall be as prescribed by law and customary benefits shall be as established by Consultant employment policy.
- **Cost Plus** is defined as the individual's base salary plus actual overhead plus professional fee. Overhead shall include customary and statutory benefits, administrative expense, and non-project operating costs.
- **Lump Sum** is defined as a fixed price amount for the scope of services described.
- **Standard Rates** is defined as individual time multiplied by standard billing rates for that individual.
- **Subcontracted Services** are defined as Project-related services provided by other parties to Consultant.
- **Reimbursable Expenses** are defined as actual expenses incurred in connection with the Project.

Payment Terms Consultant shall submit invoices at least once per month for services performed and Client shall pay the full invoice amount within 30 days of the invoice date. Invoices will be considered correct if not questioned in writing within 10 days of the invoice date. Client payment to Consultant is not contingent on arrangement of project financing or receipt of funds from a third party. In the event the Client disputes the invoice or any portion thereof, the undisputed portion shall be paid to Consultant based on terms of this Agreement. Invoices not in dispute and unpaid after 30 days shall accrue interest at the rate of one and one-half percent per month (or the maximum percentage allowed by law, whichever is the lesser). Invoice payment delayed beyond 60 days shall give Consultant the right to stop work until payments are current. Non-payment beyond 70 days shall be just cause for termination by Consultant.

Additional Services The Client and Consultant acknowledge that additional services may be necessary for the Project to address issues that may not be known at Project initiation or that may be required to address circumstances that were not foreseen. In that event, Consultant notify the Client of the need for additional services and the Client shall pay for such additional services in an amount and manner as the parties may subsequently agree.

Site Access The Client shall obtain all necessary approvals for Consultant to access the Project site(s).

Underground Facilities Consultant and/or its authorized subcontractor will conduct research and perform site reconnaissance in an effort to discover the location of existing underground facilities prior to developing boring plans, conducting borings, or undertaking invasive subsurface investigations. Client recognizes that accurate drawings or knowledge of the location of such facilities may not exist, or that research may reveal as-built drawings or other documents that may inaccurately show, or not show, the location of existing underground facilities. In such events, except for the sole negligence, willful misconduct, or practice not conforming to the Standard of Care cited in this Agreement, Client agrees to indemnify and hold Consultant and/or its Subcontractor harmless from any and all property damage, injury, or economic loss arising or allegedly arising from borings or other subsurface penetrations.

Regulated Wastes Client is responsible for the disposal of all regulated wastes generated as a result of services provided under this Agreement. Consultant and Client

mutually agree that Consultant assumes no responsibility for the waste or disposal thereof.

Contractor Selection Consultant may make recommendations concerning award of construction contracts and products. The Client acknowledges that the final selection of construction contractors and products is the Client's sole responsibility.

Ownership of Documents Drawings, specifications, reports, programs, manuals, or other documents, including all documents on electronic media, prepared under this Agreement are instruments of service and are, and shall remain, the property of Consultant. Record documents of service shall be based on the printed copy. Consultant will retain all common law, statutory, and other reserved rights, including the copyright thereto. Consultant will furnish documents electronically; however, the Client releases Consultant from any liability that may result from documents used in this form. Consultant shall not be held liable for reuse of documents or modifications thereof by the Client or its representatives for any purpose other than the original intent of this Agreement, without written authorization of and appropriate compensation to Consultant.

Standard of Care Services provided by Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Consultant makes no warranty or guaranty, either express or implied. Consultant will not be liable for the cost of any omission that adds value to the Project.

Period of Service Consultant shall perform the services for the Project in a timely manner consistent with sound professional practice. Consultant will strive to perform its services according to the Project schedule set forth in the provisions for Scope of Work/Fee/Schedule above. The services of each task shall be considered complete when deliverables for the task have been presented to the Client. Consultant shall be entitled to an extension of time and compensation adjustment for any delay beyond Consultant control.

Insurance and Liability Consultant shall maintain the following insurance and coverage limits during the period of service. The Client will be named as an additional insured on the Commercial General Liability and Automobile Liability insurance policies.

Worker's Compensation – as required by applicable state statute

Commercial General Liability - \$1,000,000 per occurrence for bodily injury, including death and property damage, and \$2,000,000 in the aggregate

Automobile Liability –\$1,000,000 combined single limit for bodily injury and property damage

Professional Liability (E&O) - \$1,000,000 each claim and in the aggregate

The Client shall make arrangements for Builder's Risk, Protective Liability, Pollution Prevention, and other specific insurance coverage warranted for the Project in amounts appropriate to the Project value and risks. Consultant shall be a named insured on those policies where Consultant may be at risk. The Client shall obtain the counsel of others in setting insurance limits for construction contracts.

Indemnification Consultant shall indemnify and hold harmless the Client and its employees from any liability, settlements, loss, or costs (including reasonable attorneys' fees and costs of defense) to the extent caused solely by the negligent act, error, or omission of Consultant in the performance of services under this Agreement. If such damage results in part by the negligence of another party, Consultant shall be liable only to the extent of Consultant's proportional negligence.

Dispute Resolution The Client and Consultant agree that they shall diligently pursue resolution of all disagreements within 45 days of either party's written notice using a mutually acceptable form of mediated dispute resolution prior to exercising their rights under law. Consultant shall continue to perform services for the Project and the Client shall pay for such services during the dispute resolution process unless the Client issues a written notice to suspend work.

Suspension of Work The Client may suspend services performed by Consultant with cause upon fourteen (14) days written notice. Consultant shall submit an invoice for services performed up to the effective date of the work suspension and the Client shall pay Consultant all outstanding invoices within fourteen (14) days. If the work suspension exceeds thirty (30) days from the effective work suspension date, Consultant shall be entitled to renegotiate the Project schedule and the compensation terms for the Project.

Termination The Client or Consultant may terminate services on the Project upon seven (7) days written notice without cause or in the event of substantial failure by the other party to fulfill its obligations of the terms hereunder. Consultant shall submit an invoice for services performed up to the effective date of termination and the Client shall pay Consultant all outstanding invoices within fourteen (14) days. The Client may withhold an amount for services that may be in dispute provided that the Client furnishes a written notice of the basis for their dispute and that the amount withheld represents a reasonable value.

Authorized Representative The Project Manager assigned to the Project by Consultant is authorized to make decisions or commitments related to the project on behalf of Consultant. Only authorized representatives of Consultant are authorized to execute contracts and/or work orders on behalf of Consultant. The Client shall designate a representative with similar authority.

Project Requirements The Client shall confirm the objectives, requirements, constraints, and criteria for the Project at its inception. If the Client has established design standards, they shall be furnished to Consultant at Project inception. Consultant will review the Client design standards and may recommend alternate standards considering the standard of care provision.

Independent Consultant Consultant is and shall be at all times during the term of this Agreement an independent consultant and not an employee or agent of the Client. Consultant shall retain control over the means and methods used in performing Consultant's services and may retain subconsultants to perform certain services as determined by Consultant.

Compliance with Laws Consultant shall perform its services consistent with sound professional practice and endeavor to incorporate laws, regulations, codes, and standards applicable at the time the work is performed. In the event that standards of practice change during the Project, Consultant shall be entitled to additional compensation where additional services are needed to conform to the standard of practice.

Permits and Approvals Consultant will assist the Client in preparing applications and supporting documents for the Client to secure permits and approvals from agencies having jurisdiction over the Project. The Client agrees to pay all application and review fees.

Limitation of Liability In recognition of the relative risks and benefits of the project to both the Client and Consultant, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of Consultant and its subconsultants to the Client and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of Consultant and its subconsultants to all those named shall not exceed \$50,000 or the amount of Consultant's total fee paid by the Client for services under this Agreement, whichever is the greater. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

Consequential Damages Neither the Client nor Consultant shall be liable to the other for any consequential damages regardless of the nature or fault.

Waiver of Subrogation Consultant shall endeavor to obtain a waiver of subrogation against the Client, if requested in writing by the Client, provided that Consultant will not increase its exposure to risk and Client will pay the cost associated with any premium increase or special fees.

Environmental Matters The Client warrants that they have disclosed all potential hazardous materials that may be encountered on the Project. In the event unknown hazardous materials are encountered, Consultant shall be entitled to additional compensation for appropriate actions to protect the health and safety of its personnel, and for additional services required to comply with applicable laws. The Client shall indemnify Consultant from any claim related to hazardous materials encountered on the Project except for those events caused by negligent acts of Consultant.

Cost Opinions Consultant shall prepare cost opinions for the Project based on historical information that represents the judgment of a qualified professional. The Client and Consultant acknowledge that actual costs may vary from the cost opinions prepared and that Consultant offers no guarantee related to the Project cost.

Contingency Fund The Client acknowledges the potential for changes in the work during construction and the Client agrees to include a contingency fund in the Project budget appropriate to the potential risks and uncertainties associated with the Project. Consultant may offer advice concerning the value of the contingency fund; however, Consultant shall not be liable for additional costs that the Client may incur beyond the contingency fund they select unless such additional cost results from a negligent act, error, or omission related to services performed by Consultant.

Safety Consultant shall be responsible solely for the safety precautions or programs of its employees and no other party.

Information from Other Parties The Client and Consultant acknowledge that Consultant will rely on information furnished by other parties in performing its services under the Project. Consultant shall not be liable for any damages that may be incurred by the Client in the use of third party information.

Force Majeure Consultant shall not be liable for any damages caused by any delay that is beyond Consultant's reasonable control.

Waiver of Rights The failure of either party to enforce any provision of these terms and conditions shall not constitute a waiver of such provision nor diminish the right of either party to the remedies of such provision.

Warranty Consultant warrants that it will deliver services under the Agreement within the standard of care. No other expressed or implied warranty is provided by Consultant.

Severability Any provision of these terms later held to violate any law shall be deemed void and all remaining provisions shall continue in force. In such event, the Client and Consultant will work in good faith to replace an invalid provision with one that is valid with as close to the original meaning as possible.

Survival All provisions of these terms that allocate responsibility or liability between the Client and Consultant shall survive the completion or termination of services for the Project.

Assignments Neither party shall assign its rights, interests, or obligations under the Agreement without the express written consent of the other party.

Governing Law The terms of agreement shall be governed by the laws of the state where the services are performed provided that nothing contained herein shall be interpreted in such a manner as to render it unenforceable under the laws of the state in which the Project resides.

Collection Costs In the event that legal action is necessary to enforce the payment provisions of this Agreement if Client fails to make payment within sixty (60) days of the invoice date, Consultant shall be entitled to collect from the Client any judgment or settlement sums due, reasonable attorneys' fees, court costs, and expenses incurred by Consultant in connection therewith and, in addition, the reasonable value of Consultant's time and expenses spent in connection with such collection action, computed at Consultant's prevailing fee schedule and expense policies.

Equal Employment Opportunity Consultant will comply with federal regulations pertaining to Equal Employment Opportunity. Consultant is in compliance with applicable local, state, and federal regulations concerning minority hiring. It is Consultant's policy to ensure that applicants and employees are treated equally without regard to race, creed, sex, color, religion, veteran status, ancestry, citizenship status, national origin, marital status, sexual orientation, or disability. Consultant expressly assures all employees, applicants for employment, and the community of its continuous commitment to equal opportunity and fair employment practices.

Attorney Fees Should there be any suit or action instituted to enforce any right granted in this contract, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney fees from the other party. The party that is awarded a net recovery against the other party shall be deemed the substantially prevailing party unless such other party has previously made a bona fide offer of payment in settlement and the amount of recovery is the same or less than the amount offered in settlement. Reasonable attorney fees may be recovered regardless of the forum in which the dispute is heard, including an appeal.

Third Party Beneficiaries Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder. The Client agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of this paragraph.

Captions The captions herein are for convenience only and are not to be construed as part of this Agreement, nor shall the same be construed as defining or limiting in any way the scope or intent of the provisions hereof.



City Commission Meeting
Tuesday July 26, 2011

TO: Honorable Mayor and City Commissioners

FROM: Anthony L. Kleibecker, Director of Public Safety

DATE: November 30, 2010

SUBJECT: Muskegon County Mutual Police Assistance Agreement

Summary of Request:

The Director of Public Safety is requesting that the commission approve the Muskegon County Mutual Police Assistance Agreement. This agreement will provide for supplemental police service from other law enforcement agencies in the county in the event of an emergent need or large scale incident. This document updates the current agreement which was approved by this body some years ago.

The agreement includes all ten (10) law enforcement agencies in the county.

Financial Impact:

None

Budget Action Required:

None

Staff Recommendation:

Approval of the agreement.

Muskegon County Mutual Police Assistance Agreement

This Agreement is made and entered into by and among the County of Muskegon, Charter Township of Fruitport, Charter Township of Muskegon, City of Montague, City of Muskegon, City of Muskegon Heights, City of North Muskegon, City of Norton Shores, City of Roosevelt Park, and the City of Whitehall; all Municipal Corporations organized and existing under and by virtue of the laws of the State of Michigan.

I. AUTHORITY

- A. The parties are authorized to enter into this Agreement by virtue of the provisions of the Michigan Constitution of 1963, Article VII, section 28; Act 236 of the Michigan Public Acts of 1967 (Mutual police assistance agreements); Act 278 of the Michigan Public Acts of 1909 (Home Rule Village Act); Act 279 of the Michigan Public Acts of 1909 (Home Rule City Act); Act 7 of the Public Acts of 1967 (the Urban Cooperation Act, MCL 124.502 et seq.); the Intergovernmental Contracts Act, MCL 124.1 et seq.; and the respective charters of the parties. This Agreement replaces and nullifies the Muskegon County Mutual Police Assistance Agreement ratified in [date].
- B. It is mutually understood and agreed that each of the parties and their officers, agents, and employees, in carrying out this Agreement, are engaged in a governmental function as provided for in Act 170 of the Michigan Public Acts of 1964, as amended, and are acting pursuant to these statutes, and are thus entitled to all immunities under Michigan law.

- C. It is agreed by the parties that Michigan Commission on Law Enforcement Standards (MCOLES) certified police officers (under MCL 28.609) in the employ of each of the parties shall, during on-duty hours and when carrying out this Agreement, have the same State law enforcement authority, powers, duties, privileges and immunities as are conferred upon them as police officers in their own jurisdiction, in the jurisdiction of each of the parties when acting on an emergent need or special police need. An emergent need shall not require a formal request for aid pursuant to this Agreement.
- D. Written procedures for responding to specific types of emergent needs and special police needs will be developed as needed and included as addenda to this agreement. Adoption of these procedures shall not require a municipal resolution and instead, shall become effective with the signature of the chief law enforcement officer(s) of the parties.

II. PURPOSE OF THE AGREEMENT

The parties to this agreement are located in proximity to each other within the County of Muskegon, State of Michigan. The parties recognize the mutual advantage and benefit in rendering to each other supplemental police protection in the event of an emergent need, or a special police need of the magnitude that has developed, appears to be developing, or is anticipated, where the special police need is beyond the capabilities of a single police department and therefore requires the assistance of one or more of the other agencies.

III. DEFINITIONS

"Emergent Need" shall mean any situation which an on-duty officer reasonably believes may be a threat to public safety.

"Requesting Agency" shall mean the law enforcement agency of the governmental entity in which a special police need exists and who requests aid pursuant to this Agreement.

"Responding Agency" shall mean the law enforcement agency of the governmental entity which sends personnel and/or equipment to a requesting agency pursuant to this Agreement.

"Senior Officer" shall mean the highest ranking on-duty police officer in the governmental unit who has the authority and the responsibility for directing the law enforcement agency of one of the parties at the time of a special police need, and with the actual authority to approve a request or response pursuant to this Agreement.

"Special Police Need" shall mean the circumstance, or a combination of circumstances, requiring a response or action for which additional police resources are needed for public safety or which are beyond the immediate and available capability of the requesting party. Examples include, but are not limited to,

- assistance by a specialized unit or capability (e.g. canine, bomb disposal, etc.),
- assistance to respond to an urgent or emergency incident such as a crime or disorder,

- a special event (e.g. parade, dignitary protection visit, sporting event, etc.),
- a joint task force or collaborative investigation (e.g. involving on-going investigation of a specific crime event,
- group of related crimes, or a specialized type of crime),
- natural or human-caused disaster (e.g. tornado, ice storm, hazardous materials spill, etc.), or
- critical incident of extended duration (e.g. civil disorder or riot, barricaded suspect, etc.).

"Unified Incident Command" shall mean the command structure for a special police need, involving representatives from the requesting and all responding agencies.

IV. REQUEST FOR ASSISTANCE

- A. The Senior Officer of the requesting agency shall be responsible for determining and declaring that a special police need exists within the municipality.
- B. Upon such a determination, the Senior Officer of the requesting agency shall make a request for aid to the Senior Officer of the participating agencies that possess the apparent resources to respond.
- C. A request for assistance may be transmitted in person, by electronic mail, telephone, radio, or through the appropriate communications center or dispatch center. The request shall specify the name of the special police need, type of response requested, location and safe route(s) to the scene

of the incident and assigned staging area, and communication details (i.e. radio frequencies, telephone numbers, etc.).

V. RESPONSE TO REQUEST

- A. The Senior Officer of the responding agency must evaluate each request and determine, within his/her sole discretion, whether assistance may be provided.
- B. If the request is granted, the nature and extent of the response shall be determined in the sole discretion of the Senior Officer of the responding agency. In that event, the responding agency shall immediately inform the requesting agency of the nature and extent of the response and shall immediately make available such personnel, equipment, aid or assistance as is requested and available to meet the special police need without jeopardizing the safety of the responding agency's jurisdiction.
- C. The Senior Officer of the responding agency may decline the request for aid in his/her sole discretion. In that event, the Senior Officer of the responding party shall immediately notify the requesting party that the request has been declined.
- D. No party to this Agreement shall be liable for declining to respond to an emergent need or a request for assistance to a special police need.

VI. COMMAND AND CONTROL

- A. The person in charge of general direction of police operations at the scene of a special police need shall be the Senior Officer of the requesting agency.

- B. Dependent upon the duration, magnitude, or nature of the special police need incident, a unified incident command may be established by the Senior Officer of the requesting agency. Representatives of each of the responding agencies will participate in the unified command, providing expertise, information and intelligence, and input to decision-making.
- C. However, all personnel and equipment of a responding agency shall remain under the direction of the Senior Officer of that responding agency throughout the special police need response, except as may be otherwise agreed by the Senior Officer to meet the specific requirements of the special police need incident and response.

VII. WITHDRAWAL OF PERSONNEL AND EQUIPMENT

- A. The personnel and equipment from a responding agency will be released and returned for duty in its own jurisdiction as soon as the special police need is concluded or comes within the capability of the requesting agency to satisfactorily handle it with its own resources.
- B. Notwithstanding the above, the personnel, equipment, aid, and assistance of a responding agency may be withdrawn at any time, without liability, in the sole discretion of the Senior Officer of the responding party. However, such withdrawal should only occur after notification of the Senior Officer of the requesting agency and a reasonable opportunity to make other accommodations.

- C. It is mutually understood and agreed that this Agreement does not relieve any of the participating agencies hereto from providing police protection within their own jurisdictions.

VIII. CRITIQUE AND EVALUATION

Within thirty (30) days of a request for assistance as defined within this Agreement, the chief law enforcement officer of either the requesting or a responding agency may request a meeting to discuss and evaluate the effectiveness of the response.

IX. INDEMNITY

- A. It is the intent of this Agreement that each participating government entity shall bear the sole responsibility for the acts or omissions of its personnel in any activity entered into pursuant to this Agreement, including, but not limited to, providing a response to an emergent need or to a special police need.
- B. Each entity shall indemnify and hold harmless all other parties, their officers, agents, and employees, against all claims or liabilities including attorney fees, caused by any act or omission of the indemnifying party, its officers, agents, or employees, in its performance pursuant to this Agreement.
- C. Nothing contained herein shall be intended to provide third party beneficiary rights to any persons or to create a cause of action in favor of such persons. Nothing contained herein shall be construed as a waiver of governmental immunity or other defenses to liability of any party.

X. COMPENSATION

- A. All costs to a responding agency related to compensation and disability payments, retirement and furlough payments; and all charges incurred for damage to or loss of equipment occurring as a result of, and pursuant to this Agreement, shall be borne by the responding agency.
- B. No party to this Agreement shall be required to pay any compensation to any other party to this Agreement for services rendered; the mutual advantages and protections afforded by this Agreement being considered adequate compensation to all of the parties.
- C. However, the requesting agency or its parent governmental entity, when seeking reimbursement of the cost for the emergency operations, shall seek such funds on behalf of any responding agencies. Each agency shall maintain appropriate records to support such application.

XI. TERMINATION

A governmental entity may withdraw from this Agreement by providing the other governmental entities with written notice of its intent to withdraw no less than thirty (30) days prior to the date the agency will cease to participate in this Agreement.

XII. APPROVAL BY PARTICIPANTS

- A. A government entity may agree to participate in this Agreement by adoption of a resolution authorizing the appropriate official to execute the Agreement.

CHARTER TOWNSHIP OF MUSKEGON

BY: _____
David Kieft, Jr., Township Supervisor Date

Ann Oakes, Township Clerk Date

CITY OF MONTAGUE

BY: _____
Henry E. Roesler, Jr., Mayor Date

Laurie Robillard, City Clerk Date

CITY OF MUSKEGON

BY: _____
Steven J. Warmington, Mayor Date

Ann Marie Becker, City Clerk Date

CITY OF MUSKEGON HEIGHTS

BY: _____
Darrell L. Paige, Mayor Date

Sharon Gibbs, City Clerk Date

CITY OF NORTH MUSKEGON

BY: _____
Chris Witham, Mayor Date

Marcia Jeske, City Clerk Date

CITY OF NORTON SHORES

BY: _____
Gary Nelund, Mayor Date

Lynne Fuller, City Clerk Date

CITY OF ROOSEVELT PARK

BY: _____
Rodney A. Buikema, Mayor Date

Tammera Harmsen, City Clerk Date

CITY OF WHITEHALL

BY: _____
Emery M. Hatch, Mayor Date

Karen Helmlinger, City Clerk Date

Date: July 26, 2011
To: Honorable Mayor and City Commissioners
From: Ann Marie Becker, City Clerk
RE: Encroachment Ordinance Amendment

SUMMARY OF REQUEST: This request is to amend Chapter 74, Article V of the Code of Ordinances by adding sections 74-200 through 74-214.

Under the proposed ordinance all encroachments will expire August 31, 2011, and will require renewal on or before September 1st of each year.

FINANCIAL IMPACT: New proposed fees are \$25 if an annual inspection is not required and a \$50 fee if an annual inspection is required.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the ordinance amendment.

**CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN
ORDINANCE NO. ____**

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

1. Chapter 74, Article V of the Code of Ordinances of the City of Muskegon, Michigan is amended by adding sections 74-200 through 74-214 to read as follows:

ARTICLE V. ENCROACHMENTS

Sec. 74-200. DEFINITIONS.

The term ENCROACHMENT as used in this subchapter shall mean any of the following which is located on, over, in or under any roadway, sidewalk, alley or other public right of way: architectural projection including belt course, planter, mansard, cosmetic wall covering, roof cornice and wall buttress; awning; canopy; cellar entrance; coal hole; fence; manhole; marquee; sidewalk elevator; step or stair; fire escape; standpipe or sprinkler connection; sign; subgrade spread footing; underground conduit, cables and/or wires (private); wall; loading dock, platform or facility; hoistway opening; sidewalk vault; street vault; elevated craneway or walkway; any device or object, or anything specifically permitted by the Commission and designated by it as an Encroachment subject to the provisions of the subchapter. The term ENCROACHMENT as used in this subchapter shall not include overhead electric and telephone lines, poles and appurtenances; underground electric, telephone, gas and steam lines, together with tunnels and conduits owned by a public utility, a public utility permitted by the City and for which the utility company has agreed to hold the City harmless, or monitoring wells or testing of soils or groundwater for environmental purposes which are permitted by the City Commission and/or City Engineer.

Sec. 74-201. PERMITS REQUIRED.

It shall be unlawful for any person to erect, build, maintain or relocate any Encroachment as defined in this subchapter, without first obtaining a permit from the City Clerk or by Commission approval as provided under Sec. 74-205, paying the permit fee as required under Sec. 74-206, and furnishing the necessary insurance certificate as defined under Sec. 74-208, if applicable.

Sec. 74-202. APPLICATION FOR PERMIT.

Applications for Encroachment Permits (either existing or proposed) shall be made on a form provided by the City Clerk and shall include the following information:

- (A) Name, address, and telephone number of applicant;
- (B) Location and type of the existing or proposed Encroachment, building to which attached or abutting lot which Encroachment serves, or if not abutting a privately owned lot, the location of Encroachment in street, alley or public way;
- (C) Blueprints or ink drawings showing the plans and specifications of the proposed or actual Encroachment, if requested by the City Clerk;
- (D) Such other information as the City Clerk shall require in order to insure compliance with this subchapter and all other ordinances of the City and laws of the State of Michigan.

Sec. 74-203. ENCROACHMENT PERMIT CLASSIFICATIONS.

Upon receipt of an application for an Encroachment Permit, the City Clerk shall determine whether or not such Encroachment, because of its nature, shall or shall not require regular inspections due to public safety and/or potential liability issues the Encroachment may present. Those Encroachments not requiring routine inspections shall be graded Class I Encroachments and those requiring routine inspections shall be graded Class II Encroachments, and fees shall be set accordingly as defined in Sec. 74-206.

Sec. 74-204. EXISTING ENCROACHMENTS.

All existing Encroachment permit holders shall be required to complete an application for permit as defined in Sec. 74-202, including those permitted by special written agreement.

Sec. 74-205. APPROVAL OF ENCROACHMENTS BY CITY.

- (A) It shall be the duty of the City Clerk to review the proposed or actual Encroachment to ensure it does not pose an adverse affect to public safety, inconvenience the public or interfere with public usage and where appropriate, shall order any necessary repairs, alterations or removal.

(B) When the Encroachment meets all the requirements of this and any other ordinance of the City and the laws of the State of Michigan, the City Clerk shall then issue an Encroachment Permit, provided the applicant pays the required fee as defined in Sec. 74-206 and furnishes the necessary Certificate of Insurance as defined in Sec. 74-208, if applicable. In the event the City Clerk does not believe granting the Encroachment Permit would be in the best interest of the City, the City Clerk may deny the granting of a permit.

(C) If the applicant does not concur with the decision of the City Clerk either to make repairs, alterations or removal, or the City Clerk's decision to deny the application, the application shall be transmitted to the City Commission for approval or disapproval. The decision of City Commission shall be final.

Sec. 74-206. PERMIT FEES.

Each applicant shall pay an application fee as provided in the Fee Structure established by the City Commission.

A separate permit and fee will be charged for each encroachment on any one parcel. Application fees are not prorated and are non-refundable. All permits for Encroachments now existing or issued prior to the effective date of this ordinance shall expire on August 31, 2011. All Encroachment Permits shall require renewal on or before September 1st of each year.

Sec. 74-207. LATE PAYMENT PENALTY.

Non-compliance of this Ordinance may result in additional fees as established by the City Commission.

Sec. 74-208. INSURANCE REQUIREMENT.

(A) Prior to the issuance of any Encroachment Permit, the Licensed Inspector shall determine if such Encroachment may present possible claims for personal injury, bodily injury or property damage due to its nature, and as a result may require the applicant to provide proof of liability insurance in an appropriate amount by a company authorized and acceptable to do insurance business in the State of Michigan, specifically naming the City of Muskegon, its agents, employees and elected officials, as additional insured and loss payee for any such claims.

(B) In the event such proof of liability insurance is required, it shall be updated and provided to the City annually at the time of renewal.

Sec. 74-209. INSPECTION.

The City Clerk shall inspect, at such time as he or she deems necessary, each Encroachment Permit granted to determine whether it is in need of repair or removal, and the permit fee shall be deemed to cover the costs of this inspection whether inspection be made annually or at other intervals.

Sec. 74-210. PERMIT REVOCABLE AT ANY TIME.

All rights and privileges acquired under the provisions of this subchapter or any amendment thereto are mere licenses, revocable at any time by the City Clerk or City Commission under the terms and provisions of this subchapter and all such permits shall contain this provision.

Sec. 74-211. REMOVAL OF ENCROACHMENT UPON FAILURE TO APPLY FOR PERMIT, PAY PERMIT FEE, OR MAINTAIN LIABILITY INSURANCE.

Upon failure of any person to make application for an Encroachment Permit where required, to pay the permit fee or maintain liability insurance, if applicable, the City Clerk shall have the authority to remove said Encroachment immediately. Any item(s) confiscated pursuant to the provisions of this section shall be held by the City for a period of thirty (30) days. During the thirty (30) day holding period, the owner of said item may request the return of the item on a form provided by the City Clerk. The City Clerk shall check the inventory of confiscated items and if the item is found to be held by the City the applicant may pay a \$25.00 recovery fee for each item held at which time the City Clerk shall return the item to the owner. After thirty (30) days have passed, the City Clerk may dispose of said item(s) either by disposal in an appropriate landfill or by sale.

Sec. 74-212. REMOVAL OF UNSAFE ENCROACHMENTS.

Any Encroachment which has become unsafe or presents a hazard to the general public by reason of deterioration, dilapidation, lack of repair or maintenance, interferes with any future city usage of the area or city project, or any other cause which results in a limitation by the general public in its use of the public right-of-way, is hereby declared to be a public nuisance and shall be abated in the manner provided for removal of dangerous structures.

Sec. 74-213. TEMPORARY ENCROACHMENTS.

Applications and permits for temporary or intermittent Encroachments shall be obtained in the same manner as applications and permits are obtained for permanent Encroachments.

Sec. 74-214. DELEGATION OF AUTHORITY.

Wherever in this subchapter an act or duty is required to be performed by the City Clerk, said act or duty may be delegated by the City Clerk to any employee of the City.

2. This Ordinance is to become effective ten (10) days after publication.

Ayes:

Nays:

First Reading:

Second Reading:

CERTIFICATE

The undersigned, being the duly qualified Clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the ____ day of _____, 2011, at which meeting a quorum was present and remained throughout, and that the meeting was conducted and public notice was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

Date: _____, 2011

Ann Marie Becker, MMC
City Clerk

Publish: Notice of Adoption to be published once within ten (10) days of final adoption.

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

TO: ALL PERSONS INTERESTED

Please take notice that on _____, 2011, the City Commission of the City of Muskegon adopted Chapter 74, Article V of the Muskegon City Code concerning an Encroachment Ordinance, summarized as follows:

1. Section 74-200 provides a definition for this Ordinance.
2. Section 74-201 provides the requirement for a permit if an encroachment on City owned property is going to be permitted.
3. Section 74-202 provides the requirements for an application for an encroachment permit.
4. Section 74-203 provides for a classification of encroachment permits and the need for regular inspections.
5. Section 74-204 provides for the requirement that existing encroachments need to complete an application.
6. Section 74-205 provides for the approval process of encroachments.
7. Section 74-206 provides for fees requirement for an encroachment permit.
8. Section 74-207 provides for a late payment fee.
9. Section 74-208 provides for insurance requirement for encroachments.
10. Section 74-209 provides for inspections of encroachments.
11. Section 74-210 provides that encroachment permits are revocable at any time.
12. Section 74-211 provides for the removal of an encroachment upon failure to apply for a permit, failure to pay the fee or failure to maintain insurance.
13. Section 74-212 provides for the removal of unsafe encroachments.
14. Section 74-213 provides for temporary encroachments.
15. Section 74-214 provides for delegation of authority from the City Clerk to any employee in the City.

Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in the City Hall, 933 Terrace Street, Muskegon, Michigan, during regular business hours.

This ordinance amendment is effective ten (10) days from the date of this publication.

Published: _____, 2011

CITY OF MUSKEGON

By _____
Ann Marie Becker, MMC
City Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE

Date: July 26, 2011
To: Honorable Mayor and City Commissioners
From: Finance Director
**RE: Resolution Authorizing Issuance of Municipal
Security With a Grant with Fifth Third Bank**

SUMMARY OF REQUEST:

As discussed in a recent worksession meeting, the Finance Director has been able to negotiate a \$2,000,000 loan for the purpose of paying the City's local match of federal and state grants for street improvements at a fixed rate of 2.98% interest rate over a ten year period of time.

FINANCIAL IMPACT:

As described above.

BUDGET ACTION REQUIRED:

STAFF RECOMMENDATION:

Authorize staff to proceed with the loan as described.

COMMITTEE RECOMMENDATION:

**RESOLUTION AUTHORIZING ISSUANCE OF MUNICIPAL SECURITY WITH A
GRANT OF THE CITY'S LIMITED TAX FULL FAITH AND CREDIT PLEDGE WITH
A NEGOTIATED SALE**

City of Muskegon
County of Muskegon, State of Michigan

Minutes of a regular meeting of the City Commission of the City of Muskegon, County of Muskegon, State of Michigan, held in the City Hall in the City of Muskegon on the _____ day of _____, 2011 at 5:30 p.m., Eastern Standard Time.

PRESENT: Members _____

ABSENT: Members _____

The following preamble and resolution were offered by Member _____ and supported by Member _____:

WHEREAS, the City of Muskegon, County of Muskegon, State of Michigan (the "City"), intends to borrow monies, pursuant to Revised Municipal Finance Act, as amended, and other applicable statutory authority in an amount not to exceed Two Million Dollars (\$2,000,000) (the "Security") for the purpose of paying the City's local match of federal and state grants for street improvements and to pledge its limited tax full faith and credit (the "Project").

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The City is authorized to enter into a municipal security with Fifth Third Bank. The principal and interest shall be paid by the City, primarily but not exclusively, using major and local street funds. The City of Muskegon will pledge its limited tax full faith and credit, subject to applicable Charter, statutory and Constitutional limitations.
2. The municipal security will be payable in semi-annual installments not to exceed ten years and will bear interest at the rate of not to exceed a fixed rate of 2.98% per annum on the balance of the Municipal Security remaining unpaid. The Municipal Security shall contain the City is pledging its limited tax full faith and credit pledge. The City shall sell the municipal security at a negotiated sale to Fifth Third Bank.
3. The City Commission finds that City staff considered issuing bonds for this purpose. However, the issuance costs would be quite high and the bonding process is very time intensive. Staff surveyed three major banks having offices within the city to determine if they

were willing to buy a 10-year municipal security. Two of the banks indicated they would and Fifth Third had the most favorable terms.

The City's financial advisor ran comparisons of a private placement versus the sale of a bond and advised that the private placement of the loan is the preferred avenue.

AYES: Members _____

NAYS: Members _____

RESOLUTION DECLARED ADOPTED.

Ann Marie Becker
City Clerk

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, State of Michigan, at a regular meeting held on _____, 2011, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Ann Marie Becker
City Clerk

NOTICE TO TAXPAYERS AND ELECTORS OF THE
CITY OF MUSKEGON, MICHIGAN
OF THE INTENT TO ISSUE SECURITIES WITH A GRANT OF THE CITY'S LIMITED
TAX FULL FAITH AND CREDIT PLEDGE

PLEASE TAKE NOTICE that the City Commission of the City of Muskegon, Michigan (the "City"), intends to consider on Tuesday, July 26, 2010 at 5:30 p.m. the issuance of a municipal security containing a limited tax full faith and credit pledge of the City in an amount not to exceed Two Million Dollars (\$2,000,000) for the purpose of paying the City's local match of federal and state grants for street improvements (the "Project"),

SOURCE OF PAYMENT

THE PRINCIPAL OF AND INTEREST ON SAID SECURITY SHALL BE PAYABLE FROM THE City of Muskegon and the City of Muskegon will pledge its limited tax full faith and credit , subject to applicable Charter, statutory and Constitutional limitations.

MUNICIPAL SECURITY DETAILS

SAID MUNICIPAL SECURITIES will be payable in semi-annual installments not to exceed ten years and will bear interest at the rate of not to exceed a fixed rate of 2.98% per annum on the balance of the Municipal Security remaining unpaid. The Municipal Security shall contain the City is pledging its limited tax full faith and credit pledge. The City shall sell the municipal security at a negotiated sale to Fifth Third Bank.

REASON FOR NEGOTIATED SALE

City staff considered issuing bonds for this purpose. However, the issuance costs would be quite high and the bonding process is very time intensive. Staff surveyed three major banks having offices within the city to determine if they were willing to buy a 10-year municipal security. Two of the banks indicated they would and Fifth Third had the most favorable terms.

The City's financial advisor ran comparisons of a private placement versus the sale of a bond and advised that the private placement of the loan is the preferred avenue.

NOTICE OF MEETING

The City Commission shall consider the substance of this notice at its meeting on Tuesday, July 26, 2011 at 5:30 p.m.

Ann Marie Becker
City Clerk
CITY OF MUSKEGON

Commission Meeting Date: July 26, 2011

Date: July 18, 2011

To: Honorable Mayor & City Commission

From: Community and Neighborhood Services Department

RE: Approval of Sale of City owned home at 468 W. Forest

SUMMARY OF REQUEST: To approve the attached resolution and instruct the Community and Neighborhood Services department to complete the sales transaction between Ms. Julia A. Johnson for the totally rehabilitated home at 468 W. Forest Avenue, which is part of the City's Neighborhood Stabilization Program (NSP) through the Michigan State Housing Development Authority Office of Community Development. Ms. Johnson's purchase price is \$52,000.

The beautiful three-bedroom, two and a half-bath home was previously vacant.

FINANCIAL IMPACT: The proceeds from the sale will be used to continue the rehabilitation of vacant houses through NSP to sustain our current investments to stabilize and revitalize neighborhoods.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the resolution and direct the CNS staff to complete the sale.

COMMITTEE RECOMMENDATION: None.



MUSKEGON CITY COMMISSION

RESOLUTION TO APPROVE THE PURCHASE OF
CURRENTLY CITY OWNED PROPERTY AT 468 W. FOREST AVENUE

WHEREAS, the City of Muskegon is dedicated to the redevelopment of its neighborhoods and;

WHEREAS, the City of Muskegon is dedicated to promoting high quality affordable single-family housing in the community and;

WHEREAS, the City of Muskegon is dedicated to promoting homeownership throughout its neighborhoods;

NOW THEREFORE, BE IT RESOLVED that the City Commission hereby approves the sale of 468 W. Forest Avenue to Julia A. Johnson, 2421 Peck Street, Apt. 1, Muskegon Heights. Ms. Johnson will purchase the house as an owner-occupied structure.

Adopted this 26th day of July, 2011.

Ayes:

Nays:

By _____
Stephen J. Warmington, Mayor

By _____
Ann Marie Becker, MMC City Clerk

Commission Meeting Date: July 26, 2011

Date: July 18, 2011

To: Honorable Mayor & City Commission

From: Community and Neighborhood Services Department

**RE: Approval of Sale of City-owned home at 1080 E.
Laketon**

SUMMARY OF REQUEST: To approve the attached resolution and instruct the Community and Neighborhood Services department to complete the sales transaction between Mr. Thomas Grosswiler for the totally rehabilitated home at 1080 E. Laketon Avenue, which is part of the City's Neighborhood Stabilization Program (NSP) through the Michigan State Housing Development Authority Office of Community Development. Mr. Grosswiler's purchase price is \$39,900.

The beautiful two-bedroom, one-bath home was previously vacant.

FINANCIAL IMPACT: The proceeds from the sale will be used to continue the rehabilitation of vacant houses through NSP to sustain our current investments to stabilize and revitalize neighborhoods.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the resolution and direct the CNS staff to complete the sale.

COMMITTEE RECOMMENDATION: None.



MUSKEGON CITY COMMISSION

RESOLUTION TO APPROVE THE PURCHASE OF
CURRENTLY CITY-OWNED PROPERTY AT 1080 E. LAKETON
AVENUE

WHEREAS, the City of Muskegon is dedicated to the redevelopment of its neighborhoods and;

WHEREAS, the City of Muskegon is dedicated to promoting high quality affordable single-family housing in the community and;

WHEREAS, the City of Muskegon is dedicated to promoting homeownership throughout its neighborhoods;

NOW THEREFORE, BE IT RESOLVED that the City Commission hereby approves the sale of 1080 E. Laketon Avenue to Thomas Grosswiler, 450 Glen Oaks, Apt 2C, Muskegon. Mr. Grosswiler will purchase the house as an owner-occupied structure.

Adopted this 26th day of July, 2011.

Ayes:

Nays:

By _____
Stephen J. Warmington, Mayor

By _____
Ann Marie Becker, MMC City Clerk

Commission Meeting Date: July 26, 2011

Date: July 8, 2011

To: Honorable Mayor & City Commission

From: Community and Neighborhood Services Department

RE: Approval of Sale of City owned home at 1644 Division

SUMMARY OF REQUEST: To approve the attached resolution and instruct the Community and Neighborhood Services department to complete the sales transaction between Mr. Allen Serio for the totally rehabilitated home at 1644 Division Street, which is part of the City's Neighborhood Stabilization Program (NSP) through the Michigan State Housing Development Authority Office of Community Development. Mr. Serio's purchase price is \$50,000.

The beautiful three-bedroom, one and a half-bath home was previously vacant.

FINANCIAL IMPACT: The proceeds from the sale will be used to continue the rehabilitation of vacant houses through NSP to sustain our current investments to stabilize and revitalize neighborhoods.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the resolution and direct the CNS staff to complete the sale.

COMMITTEE RECOMMENDATION: None.



MUSKEGON CITY COMMISSION

RESOLUTION TO APPROVE THE PURCHASE OF
CURRENTLY CITY OWNED PROPERTY AT 1644 DIVISION STREET

WHEREAS, the City of Muskegon is dedicated to the redevelopment of its neighborhoods and;

WHEREAS, the City of Muskegon is dedicated to promoting high quality affordable single-family housing in the community and;

WHEREAS, the City of Muskegon is dedicated to promoting homeownership throughout its neighborhoods;

NOW THEREFORE, BE IT RESOLVED that the City Commission hereby approves the sale of 1644 Division Street to Allen Serio of 1638 Division Street, Muskegon. Mr. Serio will purchase the house as an owner-occupied structure.

Adopted this 26th day of July, 2011.

Ayes:

Nays:

By _____
Stephen J. Warmington, Mayor

By _____
Ann Marie Becker, MMC City Clerk

DATE: 07/18/2011

TO: Honorable Mayor and Commissioners

FROM: Anthony Kleibecker, Director of Public Safety

RE: Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN100009

SUMMARY OF REQUEST: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **407 MARQUETTE AVE (Commercial)** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

Case# & Project Address: # EN100009 - 407 MARQUETTE AVE

Location and ownership: This structure is located on Marquette between Wood and Charles Streets and is owned by DENNIE PERRY.

Staff Correspondence: A dangerous building inspection was conducted on 01/23/10. The Notice and Order to Repair was issued on 01/26/10. On 03/03/10 the HBA tabled case with owner to provide plan and timeline for repairs as owner stated he was looking to obtain funds thru grants. A partial interior inspection was conducted 03/19/10. On May 7, 2010 the HBA declared the structure substandard and dangerous.

Owner Contact: Owner was present for both HBA meetings but no timeline was provided and no permits have been issued.

Financial Impact: CDBG Funds

Budget action required: None

State Equalized value: \$19,100 (Entire property)

Estimated cost to repair: \$50,000(Exterior Only)

Staff Recommendation: To concur with the Housing Board of Appeals decision to demolish.

SUMMARY FOR: 407 MARQUETTE AVE

407 Marquette is a single store concrete block building that was formally The Marquette Street Market, the building is currently vacant and boarded up. An interior inspection of the west section of the building on March 19, 2010 was conducted however the east end of the building could not be performed. As of this date there has not been any attempt to secure any permits and it does not appear that any repairs have been made to the building. The structure continues to deteriorate and is a blight on the Jackson Hill neighborhood.

CITY OF MUSKEGON
933 Terrace St., P.O. Box 537, Muskegon, MI 49443 (231) 724-6715
**DANGEROUS BUILDING INSPECTION
REPORT**

Tuesday, January 26, 2010

Enforcement # EN100009 **Property Address** 407 MARQUETTE AVE
Parcel #24-205-012-0004-00 **Owner** DENNIE PERRY

Inspector: Don LaBrenz II

Date completed: 01/22/2010

DEFICIENCIES:

Uncorrected

1. Broken windows on rear of building.
2. Brick facade on rear of building failing.
3. Rear wall bowing out.
4. Broken windows front
5. Front siding rotted.
6. Ceiling outside front door rotted and falling down.

Request interior inspection by all trades, electrical, mechanical and plumbing. Please contact Inspection Services with any questions or to schedule an inspection at 933 Terrace St., Muskegon, MI 49440 (231) 724 6758.

Based upon my recent inspection of the above property I determined that the structure meets the definition of a Dangerous Building and/or Substandard Building as set forth in Section 10-61 of the Muskegon City Code.

Don LaBrenz II, Building Inspector

Date

CITY OF MUSKEGON
933 Terrace St., P.O. Box 536, Muskegon, MI 49443 (231)724-6715
DANGEROUS BUILDING INTERIOR INSPECTION REPORT

407 MARQUETTE AVE
03/19/2010

Inspection noted:

Uncorrected

1. Repair roof damage leaking into stone area.
2. Replace ceiling damage due to leaking roof.
3. Repair front soffit by front entry door.
4. Repair all broken glass in windows.

Interior DB (Electrical)

5. All interior wiring in west end of building to be evaluated for damage due to the elements.
6. Interior wiring in east end of building inaccessible, but believed to not be salvageable.

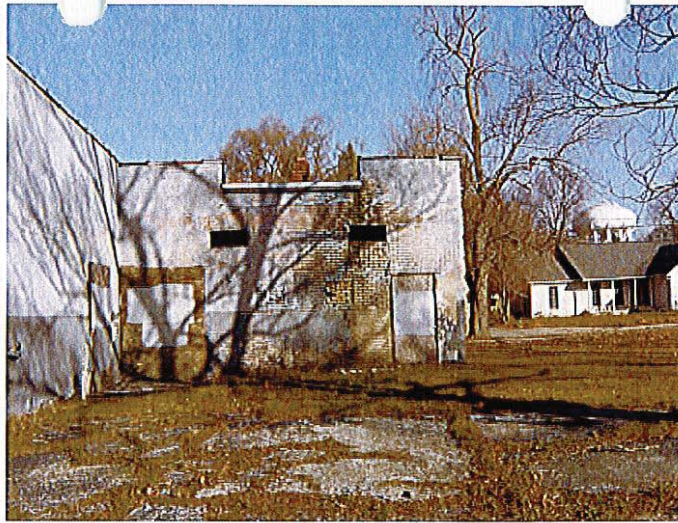
NOTE: Wire probably will need to be reconfigured depending on proposed use of building.

BASED UPON MY RECENT INSPECTION OF THE ABOVE PROPERTY, I HAVE DETERMINED THAT THE STRUCTURE MEETS THE DEFINITION OF A DANGEROUS AND/OR SUBSTANDARD BUILDING AS SET FORTH IN SECTION 10-61 OF THE MUSKEGON CITY CODE.

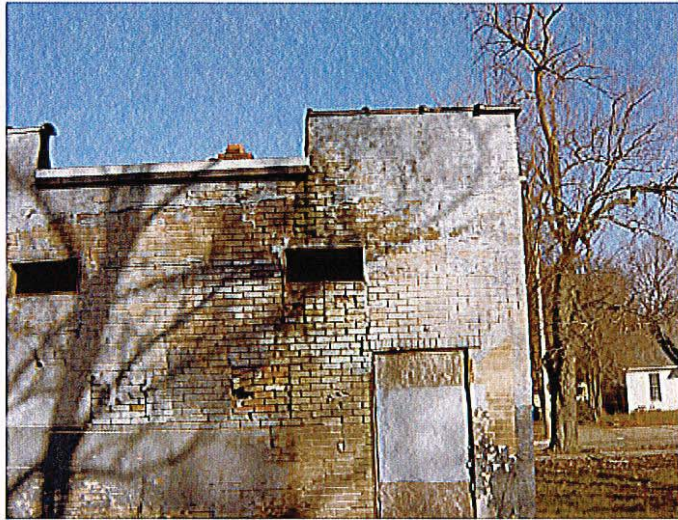
HENRY FALTINOWSKI, BUILDING INSPECTOR

DATE

407 Marquette



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407 Marquette

407 Marquette



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407 Marquette